

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

**8.
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF
ERF 1445 SANDBAAI (ROAD RESERVE): KAAP AGRİ BEDRYF LTD**

7/2/5

A Le Roux

Manager: Property Administration

22 December 2021

(028) 316-3724

1. Executive Summary

To obtain approval to enter into an encroachment agreement with Kaap Agri Bedryf Ltd, hereinafter referred to as “the Applicant”, who applied to encroach on municipal property, being a portion of Erf 1445 Sandbaai (±116m² in extent), adjoining Erf 1545 Sandbaai, situated in Main Road, Sandbaai, (see locality map attached marked Annexure “A”) hereinafter referred to as “the Property”, for a period of 5 (FIVE) years for the purpose of the partial enclosure of the Property for safety purposes.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant is the owner of Erf 1545 Sandbaai known as the Agri Mark.

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According to the Applicant beggars often sit or stand in front of the shop or in the parking area where they will approach the Applicant's clients to ask / beg for money. The Applicant receives many complaints about the beggars and especially from the elderly as the beggars get difficult and threatening them when they do not want to give them money.

The proposal is to erect a fence to create a better sense that the area is private property and to discourage beggars from standing around on the Property.

The Applicant wishes to erect a 1,8m high fence along approximately 58m in front of the parking area as per the development sketch attached as Annexure "B". As the parking area is situated on the boundary of Erf 1545 Sandbaai and as the larger vehicles parking in the parking area park in such a way that the noses of the vehicles hang over the parking space the fence cannot be erected on the boundary line. Further taking the trees on the sidewalk into account the request is to erect the fence approximately 2m from their boundary line on the adjoining municipal property. The proposed fence is a 'Clearview' fence made of Wire Force. The proposed fence will only be alongside Main Road, Sandbaai, as indicated in yellow on the attached development sketch.

The application was discussed at a Ward meeting on 12 August 2021 where the application was supported.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 4: "No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid."

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The Applicant already paid the application fee.

Paragraph 63: *“All costs pertaining to an encroachment shall be borne by the encroacher, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs. Where necessary, a deposit to cover the costs may be required.”*

In this regard, the only other costs involved is for the advertisement, which the Applicant has already paid.

Paragraph 64: *“The Municipality may, subject to such conditions as it may deem fit” –*

Paragraph 64.4: *“permit the enclosure or exclusive use of portions of the commonage, public open spaces, public thoroughfares or any municipal owned immovable property for gardening purposes, provided inter alia that:*

- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;*
- (b) the delegated authority, through the Property Administration Department, shall:*
 - (i) obtain the comments of the relevant municipal directorate/departments;*
 - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;*
 - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;*
 - (iv) submit the application and all relevant documents to the Executive Mayor for approval;*
 - (v) notify the applicant of the Executive Mayor’s decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and*
 - (vi) issue a permit (to the successful applicant to give effect to the approval of the application;*
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.*
- (d) a monthly encroachment fee, determined by council, be levied on successful applicants municipal account for the right obtained to encroach.*

The formal written application was received, and the application fee paid.

The internal comments were requested from the relevant municipal departments and no objections to the encroachment were received.

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The advertisement for the encroachment on the Property was placed in The Village News of 17 December 2021 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. No objections were received.

The conditions as per (c) and (d) above will be included in the encroachment agreement.

The approved tariffs for 2021/2022 for the enclosure or exclusive use of portions of the Commonage, Public Open Spaces etc. is R14.40/m² (FOURTEEN RAND AND FORTY CENTS PER SQUARE METRE) (VAT excluded) per month which will amount to a total monthly encroachment fee of R1,670.40 (ONE THOUSAND SIX HUNDRED AND SEVENTY RAND AND FORTY CENTS) (VAT excluded) per month.

B. Advertisement/Notification

An advertisement for the encroachment on a portion of Erf 1445 Sandbaai was placed in The Village News of 17 December 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

Considering the above it is recommended that the encroachment to the Applicant by means of a fence be approved for a period of 5 (FIVE) years at a rental amount of R1,670.40 (ONE THOUSAND SIX HUNDRED AND SEVENTY RAND AND FORTY CENTS) (VAT excluded) per month, which is the amount approved in the budget for the 2021/2022 financial year.

7. Financial Implications

The Municipality stands to gain an amount of R1,670.40 (ONE THOUSAND SIX HUNDRED AND SEVENTY RAND AND FORTY CENTS) (VAT excluded) per month for the 2021/2022 financial year where after the encroachment fee will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2022. All expenses pertaining to the proposed encroachment will be borne by the Applicant.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Town Planner, Mr H Boshoff – (028) 313 8900

“The Town Planning Department has no objection provided that the fence may not exceed 2,1m in height and may not impact on the character of the area.”

Manager: Engineering Services, Mr R Andrew – (028) 313 5073

“The application is not supported due to the following:

- a) The presence of vital bulk infrastructure located in and next to the area under consideration.*
- b) The planned dualling of Sandbaai Main Road and the possible space requirements.”*

Comments from Property Administration: The matter was discussed with Mr Hendriks (Senior Manager: Engineering Services) after a site inspection was done. It was requested that, if the application is approved, the agreement must include a condition that the Applicant must apply for a wayleave before the fence is erected and should any services be affected, it be relocated at the cost of the Applicant. This will be included in the agreement, if the application is approved.

Senior Manager: Operational Services, Mr T Marx – (028) 313 8948

“The Department: Operational Services Hermanus do not have any objection regarding the proposed installation of a 1,8-meter-high fence on a portion of erf 1445, Sandbaai.”

Senior Manager : Fire and Emergency Services, Disaster Management & Security Services, Mr L Smith – (028) 313 5041

“No objection.”

Building Control Officer, Mr L Coetzee – (028) 313 8085

“Building control supports this application.”

Senior Superintendent (Projects), Mr J Klem – (028) 316 5625

“The electrical department does not have any objections against the erection of the fence but must be called out to show out services before excavation.”

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Senior Superintendent: Operations, Mr P de Gruchy – (028) 313 8094

“From a traffic point of view the lease of the land will not be an issue. There are a few concerns regarding this application. Will the erected fence hamper the visibility of oncoming traffic down Sandbaai Main Road? Will the erected fence cause an obstruction for the heavy motor vehicles parked inside their parking area? Will the erected fence hamper any pedestrian which uses the sidewalk?”

Comments from Property Administration:

The fence will be a clear fence and will be approximately 10,5 metres from the verge of the Main Road and will thus not hamper the visibility of oncoming traffic down Sandbaai Main Road. The reason the fence is requested to be erected on Municipal property and not on the Applicant’s boundary is specifically to make provision for heavy motor vehicles to park inside the parking area without having to encroach into the road in front of the Applicant. The sidewalk will stay intact and no pedestrian flow will be hampered.

Senior Manager: Expenditure and Assets, Mr J Vorster – (028) 313 8046

“As this is a revenue generating proposal, with no intention to dispose of the asset, there is no objection.”

10. Annexures

Annexure A: Locality Plan 1&2

Annexure B: Development sketch indicating Encroachment area in yellow

RECOMMENDATION:

1. that the encroachment on municipal property, being a portion of Erf 1445 Sandbaai ($\pm 116\text{m}^2$ in extent), adjacent to Erf 1545 Sandbaai, by Kaap Agri Bedryf Ltd at payment of an amount of R1,670.40 (ONE THOUSAND SIX HUNDRED AND SEVENTY RAND AND FORTY CENTS) (VAT excluded) per month for a period of 5 (FIVE) years for the purpose of erecting a fence in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the prescribed tariff mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2022.

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RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 MARCH 2021
TARGET DATE TO INFORM APPLICANT :	15 MARCH 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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A Le Roux

Manager: Property Administration

22 December 2021

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
2 MARCH 2022, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

30 MARCH 2021

TARGET DATE TO INFORM APPLICANT :

15 MARCH 2021

TARGET DATE TO INFORM OBJECTOR :

N/A



